No. [redacted]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

WILLIAM L. GRIFFIN, MARVOUS SAUNDERS, MICHAEL PROCTOR, CECIL T. WASHINGTON, JR., and GWENDOLYN GREENE,

Petitioners,

v.

STATE OF MARYLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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MISCELLANEOUS

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in this case on June 8, 1961.

Opinions Below

The opinions of the Circuit Court for Montgomery County and of the Court of Appeals of Maryland have not yet been reported. They are printed in Appendix A, *infra*, pp. 19 to 29.

Jurisdiction

The judgment of the Court of Appeals of Maryland was entered on June 8, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), petitioners having asserted below and urging here denial of rights secured by the Fourteenth Amendment to the Constitution.

Question Presented

Whether, consistent with the Fourteenth Amendment, the State of Maryland may utilize powers of police enforcement, arrest, accusation, prosecution and conviction to administer and enforce the racial discrimination of a business advertising and catering to the general public.

Statutes Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, and Article 27, § 577 of the Maryland Code (1957) which provides:

> "Any person . . . who shall enter upon or cross over the land, premises or private property of any person . . . after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor . . . provided [however] that nothing in this section shall be construed to include within its provisions the entry or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others."

Statement

The instant case presents unique and important aspects of the legal issues which have arisen from the attempt of Negro citizens to obtain equal treatment with that afforded

to whites in such public accommodations as food, transportation, entertainment and recreation. The sequence of events which gave rise to petitioners' actions culminating in their conviction by the State of Maryland, has its origin in Greensboro, North Carolina, on February 1, 1960. On that day four Negro students at the North Carolina A. & T. College, who had grown increasingly impatient with prevailing practices under which Negro students could not obtain food and refreshment served at local stores, determined to seek service at a local lunch counter in Greensboro. This modest incident marked the beginning of widespread efforts, including those of present petitioners, to open service to Negroes in places of public accommodation. See Pollitt, *Dime Store Demonstrations*, 1960 Duke L. J. 315.

Glen Echo Amusement Park, the major amusement facility serving the District of Columbia and its suburbs, is located in Montgomery County, Maryland and has traditionally been patronized by white customers (Tr. 93-95).[1] On June 30, 1960, a number of persons gathered outside the main entrance of the Park to urge that Negro patrons be permitted to use the Park's facilities and to seek service for Negro patrons by patient, persistent and peaceable efforts to obtain such service (Tr. 110-128). No tickets of admission were required for entry into the Park (R.20) and petitioners, young Negro students participating in the Glen Echo protest, entered the Park through the open main gates at about 8:15 p.m. (R. 15). Having been admitted to the Park without difficulty, petitioners sought to enjoy a merry-go-round ride and took seats on the carousel (R. 16) for which they had in their possession valid tickets of admission (R. 20, Tr. 111).

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[1] "Tr." references in this Brief indicate the pagination of the official transcript of trial filed as a part of the record in this Court. "R." references indicate pages of the printed record below, nine copies of which have been filed with the Clerk of this Court.

Petitioners were hopeful that the Park would not refuse them the service which it advertised and rendered to the general public (see Tr. 114-116, 125-126). Their attempts at service were not unreasonable, considering that no tickets were required for admission to the Park itself (R. 20), that none of the signs around the Park indicated any discrimination against Negro patrons (Tr. 111), and that in all its press, radio, and television advertising in the District of Columbia area the management invited "the public generally" without distinction of race or color (R. 25-26).

It soon developed, however, that petitioners were not going to be able to ride the carousel on which they had taken their places. Francis J. Collins, employed by the Glen Echo management as a "special policeman" under arrangement with the National Detective Agency (R. 14, 18) and deputized as a Special Deputy Sheriff of Montgomery County on the request of the Park management (R. 18), promptly approached petitioners (R. 16).[2] He was dressed in the uniform of the National Detective Agency and was wearing the Special Deputy Sheriff's badge representing his state authority (R. 17-18). On the orders of and on behalf of the management (Tr. 104), Deputy Sheriff Collins directed petitioners to leave the Park within five minutes because it was "the policy of the park not to have colored people on the rides, or in the park" (R. 16). Petitioners declined to obey Collins' direction, remaining on the carrousel for which they tendered tickets of admission (R. 17, 20).[3] Having unsuccessfully directed petitioners to leave

[2] Collins was head of the private police force at the Park among whom at least two of the employees were deputized as Special Deputy Sheriffs (Tr. 105), pursuant to Montgomery County Code (1955) Sec. 2-91.

[3] Friends of the petitioners had purchased these tickets and had given them to petitioners (Tr. 111, 118-119). There is no suggestion that the management placed any restriction upon the transfer of tickets to friends and relatives; indeed, it was conceded by an agent of the Park that transfers frequently occurred in his presence (R. 21). No offer to refund the purchase price was made to petitioners (R. 20).

the premises, under color of his authority as a Special Deputy Sheriff of Montgomery County Collins now arrested petitioners (R. 17, 18) for wantonly trespassing in violation of a Maryland statute (Code, Art. 27, Sec. 577) making it illegal to "enter or cross over" the property of another "after having been duly notified by the owner or his agent not to do so." There was no suggestion that petitioners "were disorderly in any manner" (see p. 23, *infra*). At the subsequent trial, Deputy Sheriff Collins affirmed that he arrested petitioners *"because they were negroes,"* and explained that *"I arrested them on orders of Mr. Woronoff [Park Manager], due to the fact that the policy of the park was that they catered just to white people . . ."* (R. 19).

At the Montgomery County Police precinct house, where petitioners were taken after their arrest (R. 17), Collins preferred sworn charges for trespass against the petitioners (R. 11, Tr. 41), leading to their trial under the Maryland wanton trespass statute in the Circuit Court for Montgomery County on Sept. 12, 1960. At the trial, Park co-owner Abram Baker candidly described his use of Deputy Sheriff Collins to enforce racial discrimination:

> "Q. Would you tell the Court what you told Lieutenant Collins relating to the racial policies of the Glen Echo Park? A. We didn't allow negroes and in his discretion, if anything happened, in any way, he was supposed to arrest them, if they went on our property.
>
> Q. Did you specify to him what he was supposed to arrest them for? A. For trespassing.
>
> Q. You used that word to him? A. Yes; that is right.
>
> Q. And you used the word 'discretion'—what did you mean by that? A. To give them a chance to walk off; if they wanted to.

Q. Did you instruct Lieutenant Collins to arrest all negroes who came on the property, if they did not leave? A. Yes.

Q. That was your instructions? A. Yes.

Q. And did you instruct him to arrest them because they were negroes? A. Yes" (R. 24-25).

Petitioners' constitutional objections to the State's participation in and support of racial discrimination, were repeatedly rejected by the trial court (R. 13-14, 17, 27-30, 32, 33-36). Petitioners were convicted and fined for wanton trespass under the Maryland statute (R. 1-5, p. 19, *infra*). The Maryland Court of Appeals affirmed the convictions, holding the petitioners' refusal to leave the premises upon instructions of management agent Collins, to constitute unlawfully "entering or crossing over" the owners' property, within the meaning of Art. 27, Sec. 577. The Court dismissed the objections under the Fourteenth Amendment and under 42 U.S.C. §§ 1981 and 1982 to State support of racial discrimination by a public commercial enterprise, finding the case to be "one step removed from State enforcement of a policy of segregation" (*infra*, pp. 27-28).

The question thus presented is whether the ruling below can stand, consistent with the equal protection and due process guarantees of the Fourteenth Amendment, in circumstances where the State's direction to leave, the arrest, the accusation, the prosecution and the criminal conviction supported and enforced discrimination against peaceable Negro patrons by a commercial enterprise advertising and catering to the general public.

Reasons for Granting the Writ

This Case Presents for Review a Compelling Record of State Participation In and Support to "Private" Racial Discrimination and Provides Important Illumination on a Constitutional Issue Presently Pending before the Court

At its present term this Court will review the use of a Louisiana breach of the peace statute in a manner which provided the support of the State to the racially discriminatory practices of businesses catering to the public. See Nos. 26, 27 and 28, *Garner*, *Briscoe* and *Hoston* v. *Louisiana*. There are also pending applications for review from Virginia, North Carolina and Maryland involving convictions for "trespass" and "disorderly conduct" of Negroes seeking food, recreation and similar public services at business establishments discriminating against Negro customers. See No. 248, *Randolph* v. *Virginia;* No. 71, *Drews* v. *Maryland;* No. 85, *Avent* v. *North Carolina*. This Court's review is especially warranted in the instant case, for it presents a unique degree of State involvement in and support to racial discrimination against orderly Negro patrons by the largest amusement facility catering to the public in the District of Columbia area. In addition, concurrent review of this proceeding will provide important illumination upon fundamental issues presented in the Louisiana cases and the pending applications for review from Virginia, North Carolina and Maryland.

The premise of the challenge against the criminal proceedings involved in the pending cases is that such manifestations of state power in support of the racially discriminatory practices of enterprises serving the public, constitute "state action" forbidden by the Fourteenth Amendment. What the states have done in all these cases falls well within the area of impermissible state action set forth in this Court's rulings in *Shelley* v.

Kraemer, 334 U.S. 1, *Barrows* v. *Jackson*, 346 U.S. 249, and *Marsh* v. *Alabama*, 326 U.S. 501. Indeed, in the instant case there is an even closer interplay between private discrimination and its enforcement by various powers of the State than existed in *Shelley*, *Barrows* and *Marsh*. For here, not only the prosecutory and judicial power of the State have been employed to enforce discrimination, but the State's police authority was handed to the Glen Echo management on a formalized basis for the continuing administration and enforcement of its discriminatory policy. Deputy Sheriff Collins, not upon the request but upon the orders of the private management which employed him, and wearing the badge of his public office, informed and instructed petitioners that because they were Negroes they would have to leave the premises. It was Collins and his associates who were thus administering the Park's policy of racial discrimination on a day to day basis and Collins' direction to the petitioners to leave the premises consummated the unconstitutional involvement of the State in the "private" practice of discrimination.[4] Then, to add injury to insult, still following the orders of his employers and in his capacity as an officer of the State, Collins arrested petitioners and filed a warrant under oath against them, bringing into play the prosecutorial machinery of the State. The significance of the case at bar is thus found in the fact, directly contrary to the ruling below that State action here was "one step removed from State enforcement of a policy of segregation," that there was absolutely no severance at any time between public and private authority at Glen Echo Park. *What this case adds to those presently before*

[4] Indeed, Deputy Sheriff Collins "made the crime" of which petitioners were convicted. Collins' direction to leave was a necessary prerequisite of the trespass charge, for petitioners could not have been so charged (and were admittedly lawfully on the premises) until Collins, a state officer, directed them to leave.

the Court is that the Park's policy of racial discrimination was at all times being administered and enforced by the State through Deputy Sheriff Collins and his colleagues. Here the State of Maryland was not merely enforcing the Company's racial discrimination through prosecution in the courts, but was itself administering that discrimination on the premises of the largest public amusement facility in the District of Columbia area. Cf. *Pennsylvania* v. *Board of Trusts*, 353 U.S. 230.

As this Court recently phrased the presently applicable principle in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722, the equal protection clause is invoked when "*to some significant extent the state in any of its manifestations has been found to become involved*" in private conduct abridging individual rights. The applicability of this rule when the state lends its support to discrimination, through its police powers of direction to leave premises, arrest, accusation, prosecution and conviction, certainly presents an important question for review; this Court characterized the analogous issue presented in *Shelley* v. *Kraemer* as involving "basic constitutional issues of obvious importance" (334 U. S. at p. 4).

Significantly, the United States as amicus curiae in *Boynton* v. *Virginia* (No. 7, October Term, 1960) recently urged reversal of a Virginia trespass conviction upon the ground being urged in the pending case, that the Fourteenth Amendment precludes a state's prosecutorial enforcement of racial discrimination by a business catering to the public.[5] In the Government's Brief before this

[5] This Court decided the *Boynton* case (364 U.S. 454) on the independent interstate commerce point also urged by the Government. But, for present purposes, it should be emphasized that in the Government's view, invocation of Virginia's criminal trespass authority to support the racially discriminatory policy of the private restaurant there involved, constituted a complete and independent ground for reversal under the Fourteenth Amendment.

Court (at p. 17), the Solicitor General emphasized that "The application of a general, nondiscriminatory, and otherwise valid law to effectuate a racially discriminatory policy of a private agency, and the enforcement of such a discriminatory policy by state governmental organs, has been held repeatedly to be a denial by state action of rights secured by the Fourteenth Amendment." Pertinent judicial rulings, the Brief for the United States suggested, demonstrate that "where the state enforces or supports racial discrimination in a place open for the use of the general public . . . it infringes Fourteenth Amendment rights notwithstanding the private origin of the discriminatory conduct" (at p. 20). The Solicitor General concluded that the conviction for "trespass" of a Negro seeking service at a Richmond, Virginia, restaurant constituted unlawful state support to private discrimination, and that

> "When a state abets or sanctions discrimination against a colored citizen who seeks to patronize a business establishment open to the general public, the colored citizen is thereby denied the right 'to make and enforce contracts' and 'to purchase personal property' guaranteed by 42 U.S.C. 1981 and 1982 against deprivation on racial grounds" (at p. 28).

Clearly, the pending state prosecutions for "trespass", "breach of peace" and "disorderly conduct", enforcing the racial practices of businesses catering to the general public, offend the mandate of the Fourteenth Amendment under the authoritative rulings of this Court and present an important issue for review.[6] Yet, the manifest applicability of this Court's rulings against state support to

[6] The State action involved in the instant case not only offends the Constitution but equally transgresses 42 U.S.C. §§ 1981 and 1982. These statutory prohibitions also provide significant and contemporary illumination on the intended scope of the Fourteenth Amendment itself.

private discrimination does not obscure the fact that a number of unresolved questions inhere in the adjudication of the pending constitutional issue. We recognize that the Court will desire carefully to examine certain recurring questions involved in state support to private practices of racial discrimination, and we respectfully suggest that the instant case particularly lends itself to the examination of four of these questions, to which we now turn:[7]

1. *What degree of state participation in private discrimination constitutes "state action" forbidden by the Fourteenth Amendment?*

In its recent *Wilmington Parking Authority* decision, 365 U. S. 715, 722, this Court stated that the Fourteenth Amendment is violated when state support to private discrimination has been given *"to some significant extent."* This Court will certainly be called upon in the pending cases to determine whether a "significant extent" of state support to discrimination inheres in the arrest, accusation, prosecution and conviction (taken separately or together), of Negro customers peaceably seeking to obtain services provided by business establishments catering to the general public.

We submit that state prosecution and conviction which enforces the racial discrimination of a business proprietor constitutes significant state aid to discrimination in violation of the Fourteenth Amendment.[8] But in the instant

[7] A fifth question for this Court's consideration may be whether in this case the highest court of Maryland has construed the Maryland enactment "as authorizing discriminatory classifications based exclusively on color." See concurring opinion of Mr. Justice Stewart in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715. While the Maryland statute is neutral on its face, as construed below it requires the conviction of one who, "after having been duly notified by the owner or agent not to do so" *because he is a Negro*, enters or crosses over his property.

[8] This, indeed, is the holding of the Third Circuit, one directly contrary to the ruling below, under similar factual circumstances. See *Valle* v. *Stengel*, 176 F. 2d 697.

case we have far more state action than prosecution and conviction. Here the Deputy Sheriffs were the omnipresent administrators and enforcers of the owners' racial discrimination; here on orders of the private management the officer of the State, wearing his badge as a Deputy Sheriff, demanded that petitioners leave the premises because they were Negroes, thereafter arrested them "because they were Negroes", and filed sworn complaints which initiated the State prosecutions. The entire sequence of events demonstrates Maryland's inextricable and continuous involvement in the administration and enforcement of the racially discriminatory policy of Glen Echo Park.

2. *Is the Fourteenth Amendment transgressed in the absence of a showing that it has been the state's purpose to enforce racial discrimination, when the state's authority has served to administer and enforce such discrimination?*

The court below ruled that the arrest and conviction of petitioners "as a result of the enforcement by the operator of the park of its lawful policy of segregation", could not "fairly be said to be" the action of the State. In so doing, the court below apparently accepted a major contention of the State, that prosecution and conviction is essentially a neutral manifestation of Maryland's general interest in enforcing "property rights," devoid of any racial connotation. This contention does not question that the manifestation of the State's power has the *effect* of supporting the practice of racial discrimination; rather, it suggests that, unless the State's *purpose* is to give support to discrimination, the Fourteenth Amendment is not violated.

But discriminatory "motivation" by the state can hardly be the *sine qua non* of the Fourteenth Amendment's applicability when as a matter of fact the exercise of the

state's power supports and abets the practice of racial discrimination. Nowhere in the restrictive covenant decisions or in the recent formulation in *Wilmington Parking Authority* is a motive requirement suggested; recently, in *Gomillion* v. *Lightfoot*, 364 U.S. 339, this Court rejected a similarly confining motivational interpretation of the Fourteenth Amendment's equality guarantee. Indeed, the very contention that the State is "neutrally" enforcing property rights rather than intending to assist discrimination, was rejected in *Shelley* v. *Kraemer*, this Court emphasizing that "the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment" (p. 22).

In any event, in the instant case it is clear that not only the effect but the purpose of the State's action has been to give support to Glen Echo's racial policy. The State surrendered its police authority to the use and control of a private corporation for its enforcement of racial discrimination. Armed with police authority, Deputy Sheriff Collins obeyed the orders of his employers in seeking to expel and thereafter in arresting and charging petitioners for trespass. Collins, acting under color of law, had as his sole purpose the administration of discrimination against Negroes. Having put its authority under the orders and control of the Park for its enforcement of racial discrimination, the State cannot now be heard to say that the owners' purpose was not its purpose as well.

3. *To what extent is the resolution of the constitutional issue affected by the consideration that the "property rights" being enforced are those of business establishments catering to the general public rather than homeowners or others seeking personal privacy?*

In *Marsh* v. *Alabama*, 326 U.S. 501, this Court ruled that the exertion of state criminal authority on behalf of

a proprietor's restriction on the liberties of a member of the general public on his premises was precluded by the Fourteenth Amendment. The Court pointed out (at 505-506): "The State urges in effect that the corporation's right to control the inhabitants of Chickasaw is coextensive with the right of a homeowner to regulate the conduct of his guests. We cannot accept that contention. Ownership does not always mean absolute dominion. *The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.*" (Emphasis supplied). The *Marsh* case thus highlights the significance attaching to the fact that in the pending case racial discrimination is being enforced by the State on behalf of a public establishment rather than on behalf of individuals, homeowners or associations seeking protection of rights of personal property or privacy. As the Government's brief affirmed with respect to a similar trespass prosecution in last term's *Boynton* case (at p. 20, 22), the Fourteenth Amendment is infringed where the state "*enforces or supports racial discrimination in a place open for the use of the general public,*" for the issue

> "is not whether the right, for example, of a homeowner to choose his guests should prevail over petitioner's constitutional right to be free from the state enforcement of a policy of racial discrimination, but rather whether the interest of a proprietor who has opened up his business property for use by the general public—in particular, by passengers travelling in interstate commerce on a federally-regulated carrier—should so prevail."

Glen Echo Amusement Park is a licensed business enterprise owned and operated by corporations chartered by the State of Maryland. It caters to the general public as

the major amusement park in the District of Columbia area and none of its numerous advertisements through various means of public communication reflected any discrimination against Negro members of the public. No tickets of admission were required for entrance to the Park through its open gates, and no signs around the Park proclaimed any restriction upon the custom of Negro patrons. These factors underline the critical consideration in the pending case that the State's power is being invoked to enforce not personal privacy, but rather to assist a business catering to the general public in its refusal of service to Negro members of the public. We suggest that in the disposition of the pending issue, a vital constitutional difference inheres in the distinction between state enforcement of racial discrimination at places of public accommodation, and state protection (where there has been no dedication of the property to the general public) of individual, residential or associational privacy.[9]

4. What would be the impact of a ruling by this Court that state power may not be invoked to assist business establishments in their discrimination against Negro customers?

In its *public school desegregation decisions* this Court evidenced its concern with the impact of a constitutional ruling requiring widespread changes in local customs and

[9] It cannot be too strongly emphasized that there is involved here, not the right of an individual to determine the people he will receive and entertain in his home or private estate, or to select the beneficiaries of his private benevolence. Compare *Pennsylvania v. Board of Trusts*, 357 U.S. 570, with *Pennsylvania v. Board of Trusts*, 353 U.S. 230. The right of the individual to the aid of the state in enforcing his own discriminatory ideas outside his strictly private or personal domain is another matter. And it is here that the Fourteenth Amendment forbids the state to intervene to support racially discriminatory practices. Private corporations cannot invite the general public to patronize their businesses and then call upon the state to exclude members of the public solely because of their race.

practices. In the pending cases this Court will doubtless consider the suggestion that, if denied state enforcement of racial practices, proprietors will widely resort to forcible self-help.[10] On this score, we submit that the public record demonstrates the unlikelihood of any substantial discord or danger attendant upon the removal of state support to the discriminatory practices of enterprises serving the public. It is not the habit of establishments seeking the trade of the public to engage in the unpleasant work of self-help ousters of racial minorities; rather they seek the police to make the ousters for them. The recent abandonment of racial practices by business communities in many Southern localities demonstrates that these practices are not the product of public attitudes or business necessity but only the vestigial remains of former conditions, succored by the willingness of public authorities to enforce the written and unwritten law of segregation.

Prior to February, 1960, lunch counters throughout the South denied normal service to Negroes. Six months later, lunch counters in 69 cities had ended their discriminatory practices (N. Y. Times, Aug. 11, 1960, p. 14, col. 5); by October the number of desegregated municipalities had mounted to more than one hundred (N. Y. Times, Oct. 18, 1960, p. 47, col. 5) and has since continued to increase without apparent incident.

There is more evidence that removal of legal sanctions supporting segregation in public places effectively obviates

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[10] As the Supreme Court of North Carolina put the suggestion in *Avent v. North Carolina* (petition pending, No. 85 this Term), if an owner cannot bar Negroes "by judicial process as here, because it is State action, then he has no other alternative but to eject them with a gentle hand if he can, with a strong hand if he must." This contention is not, of course, legally relevant to the constitutional validity of State action in support of discrimination. What we suggest in the text here is that the contention is not only legally irrelevant but factually tenuous. Indeed, in Durham, North Carolina, where *Avent* arose, the dime stores have since quietly abandoned discrimination.

further conflict or difficulty. When state segregation laws were struck down, public libraries in Danville, Virginia and Greenville, South Carolina were closed to avoid desegregation; they reopened a short time later, first on a "stand up only" basis and then on a normal basis, all without incident. Then, too, when public swimming pools were judicially ordered to desegregate, San Antonio, Corpus Christi, Austin, and others integrated without disorder or difficulty. See Pollitt, *The President's Powers in Areas of Race Relations*, 39 N.C.L. Rev. 238, 275. Similarly, Miami Beach, Houston, Dallas and others integrated their public golf courses without incident. Ibid. Again, while the *in terrorem* argument against desegregation was suggested in cases involving pullman cars (*Mitchell* v. *United States*, 313 U.S. 81), dining cars (*Henderson* v. *United States*, 339 U.S. 816), buses (*Morgan* v. *Virginia*, 328 U.S. 373), and air travel and terminal service (*Fitzgerald* v. *Pan American World Airways*, 229 F. 2d 499; *Nash* v. *Air Terminal Services*, 85 F. Supp. 545), experience has disproved the predictions of violence.

In the instant case no possible difficulty could arise from this Court's invalidation of State support for segregation at Glen Echo Amusement Park, the Park having abandoned its prior racial practices in March of this year (see Washington Post, March 15, 1961, p. 1, col. 2). Unquestionably, an element in the management's abandonment of discrimination was petitioners' challenge to the State's enforcement of that discrimination. The national evidence equally demonstrates that state enforcement of segregation constitutes the last remaining cornerstone for racial practices at places of public service and accommodation.

Conclusion

The instant case, involving prosecutions for trespass, presents in sharp focus constitutional questions related to those the Court has agreed to review in the Louisiana cases, arising from prosecutions for breach of the peace. In a like setting, this Court has indicated the desirability of its concurrent review over cases presenting related aspects of a constitutional question of national importance. *Brown* v. *Board of Education*, 344 U.S. 1, 3. It is submitted that the grant of certiorari in this case is justified both by the compelling record of Maryland's administration of and support to the "private" practice of racial discrimination, and by the illumination this record furnishes upon material aspects of a pending constitutional issue of nationwide importance.

Respectfully submitted,

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APPENDIX A

Oral Opinion of Trial Court

It is very unfortunate that a case of this nature comes before the criminal court of our State and County. The nature of the case, basically, is very simple. The charge is simple trespass. Simple trespass is defined under Section 577 of Article 27 of the Annotated Laws of Maryland, which states that "any person or persons who shall enter upon or cross over the land, premises, or private property of any person or persons in this State, after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor." Trespass has been defined as an unlawful act, committed without violence, actual or implied, causing injury to the person, property or relative rights of another. This statute also has a provision in it which says that it is the intention of the Legislature as follows: "It is the intention of this section only to prohibit any wanton trespass upon the private land of others." Wanton has been defined in our legal dictionaries as reckless, heedless, malicious; characterized by extreme recklessness, foolhardiness and reckless disregard for the rights or safety of others, or of other consequences.

There have been many trespass cases in Maryland. As a matter of fact, there is one case now pending before the Court of Appeals of Maryland where the racial question has been injected into a disorderly conduct case, and that is the case of "State of Maryland versus Dale H. Drews", decided some few months ago. In that case, Judge Menchine filed a lengthy written opinion, in which he touched upon the rights of a negro to go on private property, whether it is a semi-public or actually a public business, and is that case Judge Menchine said as follows:

"The rights of an owner of property arbitrarily to restrict its use to invitees of his selection is the established law of Maryland." This Court agrees with that opinion, and unless that case is reversed by the Court of Appeals of Maryland, at its session this Fall, that will continue to be the law of Maryland.

That statement by Judge Menchine is based upon authorities of this State, and not too far back, in the case of Greenfeld versus the Maryland Jockey Club, 190 Md. 96, in which the Court of Appeals of this State said: "The rule that, except in cases of common carriers, inn-keepers and similar public callings, one may choose his customers, is not archaic."

If the Court of Appeals changes its opinion in the 190 Maryland case, then we will have new law in this State on the question of the right of a negro to go on private property after he is told not to do so, or after being on it, he is told to get off.

In this Country, as well as many, many counties in the United States, we have accepted the decision of integration that has been promulgated by the Supreme Court in the school cases, and without and provocation or disputes of any consequence. There is no reason for this Court to change that method of accepting integration, but when you are confronted with a question of whether or not that policy can be extended to private property, we are reaching into the fundamental principles of the foundation of this country.

The Constitution of the United States has many provisions, and one of its most important provisions is that of due process of law. Due process of law applies to the right of ownership of property—that you cannot take that property, or you cannot do anything to interfere with that man's use of his property, without due process of law.

Now, clearly, in this case, which is really a simple case; it is a simple case of a group of negroes, forty in all, getting together in the City of Washington, and coming into Maryland, with the express intent, by the testimony of one of the defense witnesses, that they were going to make a private corporation change its policy of segregation. In other words, they were going to take the law in their own hands. Why they didn't file a civil suit and test out the right of the Glen Echo Park Amusement Company to follow that policy is very difficult for this Court to understand, yet they chose to expose themselves to possible harm; to possible riots and to a breach of the peace. To be ex-

posed to the possibility of a riot in a place of business, merely because these defendants want to impress upon that business their right to use it, regardless of the policy of the corporation, should not be tolerated by the Courts. Unless the law of this State is changed, by the Court of Appeals of Maryland, this Court will follow the law that has already been adopted by it, that a man's property is his castle, whether it be offered to the public generally, or only to those he desires to serve.

There have been times in the past, not too many years back, when an incident of this kind would have caused a great deal of trouble. It could have caused race riots, and could have caused bloodshed, but now the Supreme Court, in the school case in 1954, has decided that public schools must be integrated, and the people of this County have accepted that decision. They have not quibbled about it; They have gone along with it without incident. We are one of the leading counties in the United States in accepting that decision. If the Court of Appeals of Maryland decides that a negro has the same right to use private property as was decided in the school cases, as to State or Government property, or if the Supreme Court of the United States so decides, you will find that the places of business in this County will accept that decision, in the same manner, and in the same way that public authorities and the people of the County did in the School Board decision, but there is nothing before this Court at this time except a simple case of criminal trespass. The evidence shows the defendants have trespassed upon this Corporation's property, not by being told not to come on it, but after being on the property they were told to get off.

Now it would be a ridiculous thing for this Court to say that when an individual comes on private property, and after being on it, either sitting on it or standing on it, and the owner comes up and says, "Get off my property", and then the party says "You didn't tell me to get off the property before I came on it, and, therefore, you cannot tell me to get off now" he is not guilty of trespass because he was not told to stay off of the property. It is a wanton trespass when he refuses to get off the property, after being told to get off.

One of the definitions of wanton is "foolhardy" and this surely was a foolhardy expedition; there is no question about that. When forty people get together and come out there, as they did, serious trouble could start. It is a simple case of trespass. It is not a breach of the peace, or a case of rioting, but it could very easily have been, and we can thank the Lord that nothing did take place of such a serious nature.

It is not up to the Court to tell the Glen Echo Amusement Company what policies they should follow. If they violate the law, and are found guilty, this Court will sentence them.

It is most unfortunate that this matter comes before the Court in a criminal proceeding. It should have been brought in an orderly fashion, like the School Board case was brought, to find out whether or not, civilly, the Glen Echo Park Amusement Company would follow a policy of segregation, and then you will get a decision based on the rights of the property owner, as well as the rights of these defendants. So, the Court is very sorry that this case has been brought here in our courts.

It is my opinion that the law of trespass has been violated, and the Court finds all five defendants guilty as charged.

Opinion of Court of Appeals of Maryland

This is a consolidated appeal from ten judgments and sentences to pay fines of one hundred dollars each, entered by the Circuit Court for Montgomery County after separate trials, each involving five defendants, on warrants issued for wanton trespass upon private property in violation of Code (1957), Art. 27, § 577.

The first group of defendants, William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Greene (hereinafter called "the Griffin appellants" or "the Griffins"), all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekab, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park). The second group of defend-

ants, Cornelia A. Greene, Helene D. Wilson, Martin A. Schain, Ronyl J. Stewart and Janet A. Lewis (hereinafter called "the Greene appellants" or "the Greenes"), two of whom are Caucasians, were arrested on July 2, 1960, also in Glen Echo, and were also charged with criminal trespass.

The Griffins were a part of a group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest "the segregation policy that we thought might exist out there." The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to further implement the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carrousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekab and Kebar had a "protection" contract with the National Detective Agency (agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so.

The Greene appellants entered the park three days after the first incident and crossed over it and into a restaurant operated by the B & B Industrial Catering Service, Inc., under an agreement between Kebar and B & B. These

appellants asked for service at the counter, were refused, and were advised by the park officer that they were not welcome and were ordered to leave. They refused to comply by turning their backs on him and he placed them under arrest for trespassing. Abram Baker (president of both Rekab and Kebar) testified that it was the policy of the park owner and operator to exclude Negroes and that the park officer had been instructed to ask Negro customers to leave, and that if they did not, the officer had orders to arrest them. There was no evidence to show that the operator of the restaurant had told the Greenes they were not welcome or to leave; nor was there any evidence that the park officer was an agent of the restaurant operator. And while a prior formal agreement covering the 1957 and 1958 seasons had provided that the restaurant operator was subject to and should comply with the rules and regulations concerning the persons to be admitted to the park and that Kebar had reserved the right to enforce them, the letter confirming the agreement for the 1959 and 1960 seasons fixed the rentals for that period and alluded to other matters, but made no reference whatsoever, either directly or indirectly, to the prior formal agreement—though there was testimony, admitted over objection, to the effect that the letter was intended as a renewal of the prior lease—and was silent as to a reservation by Kebar of the right to police the restaurant premises during the 1959 and 1960 seasons.

On this set of facts, both groups of appellants make the same contentions on this appeal: (i) that the requirements for conviction under Art. 27, § 577, were not met; and (ii) that the arrest and conviction of the appellants constituted an exercise of the power of the State of Maryland in enforcing a policy of racial segregation in violation of the Fourteenth Amendment to the Constitution of the United States.

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[1] The document was called an "agreement"; the operator of the restaurant was referred to therein as a "concessionaire" and was described in the agreement as a "licensee" and not a "lessee"; yet the agreement called for the payment of rent (payable bi-annually) as well as for a portion of the gross receipts and a part of the county licensing fees and certain other items of expense.

Trespass to private property is not a crime at common law unless it is accompanied by, or tends to create, a breach of the peace. See *Krauss* v. *State*, 216 Md. 369, 140 A. 2d 653 (1958), and the authorities therein cited. And it was not until the enactment of § 21A of Art. 27 (as a part of the Code of 1888) by Chapter 66 of the Acts of 1900 that a "wilful trespass" (see *House Journal* for 1900, p. 322) upon private property was made a misdemeanor. That statute, which has remained unchanged in phraseology since it was originally enacted, is now § 577 of Art. 27 (in the Code of 1957), entitled "wanton trespass upon private land," and reads in pertinent part:

> "Any person * * * who shall enter upon or cross over the land, premises or private property of any person * * * after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor * * *; provided [however] that nothing in this section shall be construed to include * * * the entry or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership * * *, it being the intention of this section only to prohibit any wanton trespass upon the private land of others."

The Case Against the Griffin Appellants

(i)

The claim that the requirements for conviction were not met is threefold: (a) that due notice not to enter upon or cross over the land in question was not given to the appellants by the owner or its agent; (b) that the action of the appellants in doing what they did was not wanton within the meaning of the statute; and (c) that what the appellants did was done under a bona fide claim of right.

There was due notice so far as the Griffins were concerned. Since there was evidence that these appellants had gathered at the entrance of Glen Echo to protest the segregation policy they thought existed there, it would not be unreasonable to infer that they had received actual notice not to trespass on the park premises even though it had not been given by the operator of the park or its agent. But,

even if we assume that the Griffins had not previously had the notice contemplated by the statute which was required to make their entry and crossing unlawful, the record is clear that after they had seated themselves on the carrousel, these appellants were not only told they were unwelcome, but were then and there clearly notified by the agnt of the operator of the park to leave and deliberately chose to stay. That notice was *due* notice to these appellants to depart from the park premises forthwith, and their refusal to do so when requested constituted an unlawful trespass under the statute. Having been duly notified to leave, these appellants had no right to remain on the premises and their refusal to withdraw was a clear violation of the statute under the circumstances even though the original entry and crossing over the premises had not been unlawful. *State* v. *Fox*, 118 S.E.2d 58 (N.C. 1961). Cf. *Commonwealth* v. *Richardson*, 48 N.E.2d 678 (Mass. 1943). Words such as "enter upon" or "cross over" as used in § 577, *supra*, have been held to be synonymous with the word "trespass." See *State* v. *Avent*, 118 S.E.2d 47 (N.C. 1961).

The trespass was wanton within the meaning of the statute. Since the evidence supports a reasonable inference that the Griffins entered the park premises and crossed over it well knowing that they were violating the property rights of another, their conduct in so doing was clearly wanton. Although there are almost as many legal definitions of the word "wanton" as there are appellate courts, we think the Maryland definition, which is in line with the general definition of the word in other jurisdictions, is as good as any. In *Dennis* v. *Baltimore Transit Co.*, 189 Md. 610, 56 A.2d 813 (1948), as well as in *Baltimore Transit Co.* v. *Faulkner*, 179 Md. 598, 20 A.2d 485 (1941), it was said that the word "wanton" means "characterized by extreme recklessness and utter disregard for the rights of others." We see no reason why the refusal of these appellants to leave the premises after having been requested to do so was not wanton in that their conduct was in "utter disregard of the rights of others." Even though their remaining may have been no more than an aggravating

incident, it was nevertheless wanton within the meaning of this criminal trespass statute. See *Ex Parte Birmingham Realty Co.*, 63 So. 67 (Ala. 1913).

Since it was admitted that the carrousel tickets were obtained surreptitiously in an attempt to "integrate" the amusement park, we think the claim that these appellants had taken seats on the carrousel under a bona fide claim of right is without merit. While the statute specifically excludes the "entry upon or crossing over" privately owned property by a person having a license or permission to do so, these appellants do not come within the statutory exception. In a case such as this where the operator of the amusement park—who had a right to contract only with those persons it chose to deal with—had not knowingly sold carrousel tickets to these appellants, it is apparent that they had no bona fide claim of right to a ride thereon, and, absent a valid right, the refusal to accept the tickets was not a violation of any legal right of these appellants.

(ii)

We come now to the consideration of the second contention of the Griffin appellants that their arrest, and conviction constituted an unconstitutional exercise of state power to enforce racial segregation. We do not agree. It is true, of course, that the park officer—in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park—was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park "for duty in connection with the property" of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), § 2-91. As we see it, our decision in *Dreus* v. *State*, 224 Md. 186, 167 A.2d 341 (1961), is controlling here. The appellants in that case—in the course

of participating in a protest against the racial segregation policy of the owner of an amusement park—were arrested for disorderly conducted committed in the presence of regular Baltimore County police who had been called to eject them from the park. Under similar circumstances, the appellants in this case—in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park—were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator) after they had been duly notified to leave but refused to do so. If follows—since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland*, 5 Md.L.Rev. 125, 149)—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the *Drews* case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in *Drews*, was also "one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants."

The judgments as to the Griffin appellants will be affirmed.

The Case Against the Greene Appellants

There is not enough in the record to show that the Greenes were duly notified to leave the restaurant by the only persons who were authorized by the statute to give notice. The record discloses that these appellants entered the park and crossed over it into the restaurant on the premises, but there was no evidence that the operator or

lessee of the restaurant or an agent of his either advised these appellants that they were unwelcome or warned them to leave. There was evidence that the park officer had ordered these appellants to leave, but it is not shown that he was authorized to do so by the lessee, and a new written agreement for the 1959 and 1960 seasons having been substituted for the former agreement covering the 1957 and 1958 seasons, the state of the record is such that it is not clear that the lessor had reserved the right to continue policing the leased premises as had been the case during the 1957-1958 period. Under these circumstances, it appears that the notice given by the park officer was ineffective. There is little doubt that these appellants must have known of the racial segregation policy of the operator of the park and that they were not welcome anywhere therein, but where notice for a definite purpose is required, as was the case here, knowledge is not an acceptable notice where the required notification is incident to the infliction of a criminal penalty. 1 Merrill, *Notice*, § 509. See also *Woodruff* v. *State*, 54 So. 240 (Ala. 1911), where it was held (at p. 240) that "[i]n order to constitute the offense of trespass after warning, it is necessary to show that the warning was given by the person in possession or his duly authorized agent." And see *Payne* v. *State*, 12 S.W.2d 528 (Tenn. 1928), [a court cannot convict a person of a crime upon notice different from that expressly provided in the statute]. Since the notice to the Greene appellants was inadequate they should not have been convicted of trespassing on private property, and the judgments as to them must be reversed.

THE JUDGMENTS AGAINST THE GRIFFIN APPELLANTS ARE AFFIRMED; THE JUDGMENTS AGAINST THE GREENE APPELLANTS ARE REVERSED; THE GRIFFIN APPELLANTS SHALL PAY ONE-HALF OF THE COSTS; AND MONTGOMERY COUNTY SHALL PAY THE OTHER ONE-HALF.